

Second Affair Of 'Der Spiegel' Rocks Germany

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The idiosyncrasies of West Germany's penal code, combined with a traditional inclination toward government by secrecy, have produced a new Spiegel magazine affair.

Rudolf Augstein, 41, the spunky news magazine's editor and publisher who, along with several of his lieutenants, was arrested two years ago in connection with an article criticizing the efficiency and capability of the Bundeswehr, is again under investigation for treason.

The subject this time is a cover article in Der Spiegel dealing with German military proposals for placing atomic mines along the East-West German border.

HAZARDS

Though there are significant differences between the latest case and the one that nearly toppled the government two years ago, the similarity of the underlying principles involved disturbs most Germans.

The cases point up the ease with which German journalists can be suppressed and the hazards they encounter when they set out to criticize the government or inform the public of governmental actions.

True, this time there were no police raids of Der Spiegel's Hamburg editorial offices. Neither was Mr. Augstein arrested. (He is still awaiting formal indictment and trial in connection with the 1962 probe.)

What is more, Mr. Augstein, often regarded as the enfant terrible of German journalism, finds himself in the most impeccable and respected company this time. Under investigation with him is Adelbert Weinstein, 48, the military affairs columnist of the stodgy, conservative Frankfurter Allgemeine Zeitung.

In fact, it was Mr. Weinstein, a general staff officer in Hitler's Wehrmacht and a reserve lieutenant colonel of

the Bundeswehr, who first published details of the atomic mines project. His article last December caused a sensation at the NATO Foreign Ministers' conference.

The company may turn out to be even more illustrious if the federal Solicitor General's office in Karlsruhe decides to also investigate Defense Minister Kai-Uwe von Hassel in connection with the matter.

To date, however, it has not been determined whether Mr. von Hassel's article in the January issue of Foreign Affairs magazine, in which he also mentioned atomic mines, constitutes a possible violation of German law.

Notwithstanding these differences between the old and the new Spiegel affair, both point up what has been bothering many conscientious Germans for a long time.

Under existing laws, some of which date back to the times of Bismarck and the Kaiser, it is virtually impossible to write about or criticize government military and foreign policy without courting trouble. Government officials who like to play their cards close do not hesitate to make use of these laws.

TREASON

Paragraph 99 of the German penal code—a code essentially unchanged through the regimes of the Kaiser Reich, Weimar Republic, Third Reich and Federal Republic—describes as "state secrets" any "facts, objects, knowledge, especially documents, drawings, models or formulas which the Federal Republic or one of its states, for its and their welfare, must keep secret from foreign governments."

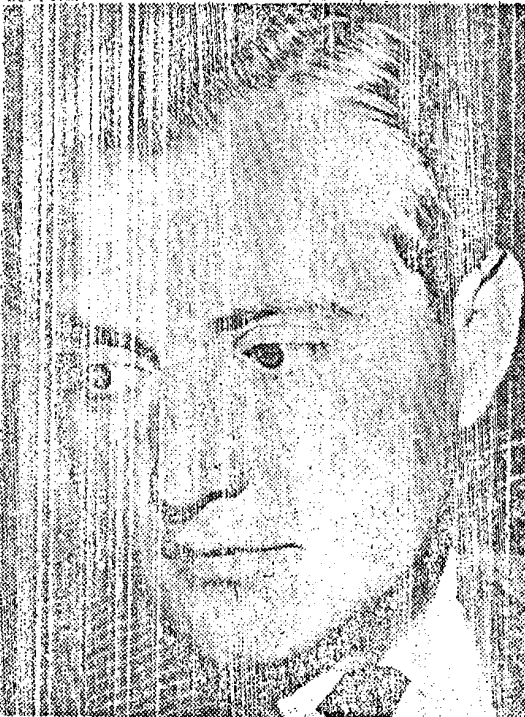
Anyone who discloses such a secret to unauthorized persons, obtains such secrets and then discloses them to other persons or makes them publicly known, according to Section 100 of the code, is guilty of treason and subject to as long as 10 years imprisonment.

The code makes no distinction between state secrets that are secret and those that are

well known to foreign countries. In the case of Mr. Augstein and Mr. Weinstein it has been established that they received their information about the atomic mines plan from the Pentagon in Washington.

The code goes even further. Under Paragraph 100A, one can be found guilty of treason for divulging false information "which, if it were not false, would be a state secret."

It is this paragraph that puts both Mr. Weinstein and Mr. Augstein in the squeeze. The Defense Ministry has declared that reported plans to place atomic mines along the border are not true. If that is the case, then the two may still be guilty—not of disclosing state secrets but of divulging "false" state secrets.



"Der Spiegel" publisher Augstein.